

NELLIE STARR McCORKLE

OCTOBER 28 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. ELLENDER, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 2675]

The Committee on Claims, to whom was referred the bill (H. R. 2675) for the relief of Nellie Starr McCorkle, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in House Report No. 694, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 694, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2675) for the relief of Nellie Starr McCorkle, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendments are as follows:

Page 1, line 5, after the figures "\$623.70," insert the words "in full settlement of all claims against the United States for".

At end of bill strike out period and add: "Provided, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay to Nellie Starr McCorkle, Mesilla Park, N. Mex., the sum of \$613.70, in full settlement of all claims against the United States for accumulated leave accrued and payable to her deceased husband, Capt. John Ray McCorkle, under the act of August 1, 1941 (ch. 348, 55 Stat. 616; 5 U. S. C., sec. 61a), by reason of his civil employment prior to his being ordered to active duty, and payment of which was withheld by reason of the fact that he was killed in the Philippine Islands shortly after the passage of the act and before he was advised of the benefits accruing to him through the provisions of said act.

STATEMENT OF FACTS

The proposed legislation would pay to Nellie Starr McCorkle the sum of \$623.70, representing compensation which, upon proper application therefor, would have been payable to Capt. John McCorkle, husband of Nellie Starr McCorkle, as an assistant agricultural engineer, Soil Conservation Service, Department of Agriculture, during annual leave of absence accumulated and prior to his entering upon active duty in the United States Army on July 1, 1941.

Nellie Starr McCorkle filed claim with the Comptroller General as the widow of John Ray McCorkle, captain, United States Army, deceased, for such sum, under the provisions of the act of August 1, 1941 (55 Stat. 616), as amended by the act of April 7, 1942 (Public Law 517, 56 Stat. 200), providing "that employees of the United States Government, its Territories or possessions, or the District of Columbia (including employees of any corporation created under authority of an Act of Congress which is either wholly controlled or wholly owned by the United States Government, or any corporation, all the stock of which is owned or controlled by the United States Government, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress), who, subsequent to May 1, 1940, shall have entered upon active military or naval service in the land or naval forces of the United States by voluntary enlistment or otherwise, shall be entitled to receive, in addition to their accumulated or current * * * accrued leave, or elect to have such leave remain to their credit until their return from active military or naval service."

On July 2, 1942, the claim was disallowed by the Comptroller General for the reason that Captain McCorkle was killed in action in the Philippine Islands on January 30, 1942, without having made the election required by the quoted statute to be paid for his leave. That is to say, he did not make application for the leave, nor was the leave granted to him prior to his death. The record before the Comptroller General reflects that Captain McCorkle did make inquiry regarding his rights under the quoted statute prior to his death, but that it was impossible to contact him by letter which was attempted by the regional personnel officer of the Department of Agriculture, or it was not possible to receive his reply out of the Philippine Islands.

The benefits provided to employees by the act of August 1, 1941—namely, the right (1) to receive compensation covering their accumulated or current annual leave, or (2) to elect to have such leave remain to their credit until their return from military or naval service—are benefits personal to the involved employees and do not inure to anyone else. Necessarily, the right of election to have the accrued and accumulated leave remain to their credit, if not exercised by the employees during their lifetime, lapses upon their death. The record fails to establish any action on the part of the employee which would perfect or complete his right to payment for his accrued and accumulated leave. The widow's allegation that her husband made inquiry regarding "the possibility of receiving payment" for "the leave under the statute prior to his death" is of no legal effect to establish such right.

The Comptroller General makes a favorable report upon the bill, concluding it by stating:

"Hence, as there existed no valid claim in the estate of the decedent under the quoted statute, this office had no alternative but to disallow the claim.

"However, in view of the facts appearing in this particular case, that is, as Captain McCorkle was killed in action after having made inquiry regarding the rights in the matter but without having had an opportunity to perfect his claim, it is believed that the bill for the relief of his widow has merit.

"The terms of the bill will accomplish the relief sought."

Your committee concur in the view of the Comptroller General that the bill has merit, and, therefore, recommend favorable consideration of the proposed legislation.

Appended hereto is the report of the Comptroller General, together with other pertinent evidence, all of which is made a part of this report.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 14, 1943.

HON. DAN R. McGEHEE,
Chairman, Committee on Claims,
House of Representatives.

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of June 4, 1943, acknowledged June 5, enclosing a copy of H. R. 2675, Seventy-eighth Congress, first session, entitled "A bill providing for payment to Nellie Starr McCorkle of accumulated leave accrued and payable to her deceased husband, Captain John Ray McCorkle, under the act of August 1, 1941 (ch. 348, 44 Stat. 616; 5 U. S. C., sec. 61a)," and requesting copies of papers on file in this office relative to the matter, together with an opinion as to the merits of the bill.

The bill provides:

"That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Nellie Starr McCorkle, Mesilla Park, New Mexico, the sum of \$623.70, accumulated leave accrued and payable to her deceased husband, Captain John Ray McCorkle, under the Act of August 1, 1941 (ch. 348, 55 Stat. 616; 5 U. S. C., sec. 61a), by reason of his civil employment prior to his being ordered to active duty, and payment of which was withheld by reason of the fact that he was killed in the Philippine Islands shortly after the passage of the Act and before he was advised of the benefits accruing to him through the provisions of said Act."

Nellie Starr McCorkle filed claim in this office as the widow of John Ray McCorkle, captain, United States Army, deceased, for \$623.70, representing compensation which, upon proper application therefor, would have been payable to her husband as an assistant agricultural engineer, Soil Conservation Service, Department of Agriculture, during annual leave of absence accumulated and accrued prior to his entering upon active duty in the United States Army on July 1, 1941. The claim was filed under the provisions of the act of August 1, 1941 (55 Stat. 616), as amended by the act of April 7, 1942 (Public Law 517, 56 Stat. 200), providing:

"That employees of the United States Government, its Territories or possessions, or the District of Columbia (including employees of any corporation created under authority of an act of Congress which is either wholly controlled or wholly owned by the United States Government, or any corporation, all the stock of which is owned or controlled by the United States Government, or any department, agency, or establishment thereof, whether or not the employees thereof are paid from funds appropriated by Congress), who, subsequent to May 1, 1940, shall have entered upon active military or naval service in the land or naval forces of the United States by voluntary enlistment or otherwise, shall be entitled to receive, in addition to their military pay, compensation in their civilian positions covering their accumulated or current accrued leave, or to elect to have such leave remain to their credit until their return from active military or naval service."

On July 2, 1942, the claim was disallowed by this office for the reason that Captain McCorkle was killed in action in the Philippine Islands on January 30, 1942, without having made the election required by the quoted statute to be paid for his leave. That is to say, he did not make application for the leave, nor was the leave granted to him prior to his death. The record before this office indicates that Captain McCorkle did make inquiry regarding his rights under the quoted statute prior to his death, but that it was impossible to contact him by letter which was attempted by the regional personnel officer of the Department of Agriculture, or it was not possible to receive his reply out of the Philippine Islands.

The benefits provided to employees by the act of August 1, 1941—namely, the right (1) to receive compensation covering their accumulated or current accrued leave, or (2) to elect to have such leave remain to their credit until their return from military or naval service—are benefits personal to the involved employees and do not inure to anyone else. Necessarily, the right of election to have the accrued and accumulated leave to remain to their credit, if not exercised by the employees during their lifetime, lapses upon their death. Compare 15 Comp. Gen. 664, 666. Except for employees of the Panama Canal (Executive order of Feb. 2, 1941; Canal Zone Code, 2:81) and the Government Printing Office (44 U. S. C. 45), under present laws the right to payment for leave ceases with the death of an employee and no commutation thereof is payable thereafter to anyone.

In decision of September 25, 1941 (21 Comp. Gen. 258, 259), it was stated:

"The annual leave of absence for which payment is authorized by the act of August 1, 1941 (55 Stat. 616), must be applied for, administratively granted and

computed the same as in any other case of annual leave, except, of course, that it need not be applied for or granted in advance. The period immediately following the last day of active service in a civilian position is the period for which compensation is payable, and to the extent covered by accumulated and accrued granted leave, with credit for Sundays and other nonwork days. B-20149, September 13, 1941 (21 Comp. Gen. 210)."

The record fails to establish any action on the part of the employee which would perfect or complete his right to payment for his accrued and accumulated leave. The widow's allegation that her husband made inquiry regarding "the possibility of receiving payment" for "the leave under the statute prior to his death" is of no legal effect to establish such right. Hence, as there existed no valid claim in the estate of the decedent under the quoted statute, this office had no alternative but to disallow the claim.

However, in view of the facts appearing in this particular case, that is, as Captain McCorkle was killed in action after having made inquiry regarding the rights in the matter but without having had an opportunity to perfect his claim, it is believed that the bill for the relief of his widow has merit.

The terms of the bill will accomplish the relief sought.

Sincerely yours,

LINDSAY C. WARREN,
Comptroller General of the United States.

[Envelope]

U. S. DEPARTMENT OF AGRICULTURE
SOIL CONSERVATION SERVICE
Albuquerque, N. Mex.
OFFICIAL BUSINESS

(Stamp) PENALTY FOR PRIVATE USE TO AVOID
PAYMENT OF POSTAGE, \$300

Personal attention:

CAPT. JOHN RAY McCORKLE,
Infantry Reserve,
Camp Bowie, Tex.

(Advise Correspondents of Your Correct Company, Regiment, and Division)

RETURNED TO SENDER
SERVICE SUSPENDED.

UNITED STATES DEPARTMENT OF AGRICULTURE,
SOIL CONSERVATION SERVICE,
Albuquerque, N. Mex., December 13, 1941.

Leave, annual (J. Ray McCorkle), regular.

Capt. JOHN RAY McCORKLE,
Infantry Reserve, Camp Bowie, Tex.

DEAR CAPTAIN McCORKLE: In the event you did not receive our letter to you of October 27, we are resubmitting the following information:

According to our records, you have annual leave to your credit amounting to approximately 69 days 7 hours and 25 minutes.

Public Law 202, Seventy-seventh Congress, approved August 1, 1941, provides that an employee who has been ordered to active duty with the military or naval forces is entitled to compensation for accumulated or current accrued leave, provided it is specifically requested by the employee.

If you have annual leave in excess of 60 days to your credit, it is believed advisable that you take at least sufficient leave to bring your balance down to 60 days, as only that amount can be carried over into the next calendar year.

Will you please return the attached questionnaire, properly completed and signed, so that this office may be informed of your choice? Please note that if you elect to take any or all of your annual leave, a leave slip (which is enclosed) must be signed and must accompany your reply. Regardless of your choice, be sure to furnish your address in the blank provided.

A self-addressed, franked envelope is enclosed for your convenience.

Very truly yours,

H. F. HALLIDAY,
(For PARKE G. HAYNES, Chief, Regional Personnel Management Division.)

ALBUQUERQUE, N. MEX., February 24, 1942.

Leave, annual, payment of (death claim, J. Ray McCorkle.)

Mr. PARKE G. HAYNES:

*Care of Miss Verna C. Mohagen,
Soil Conservation Service, Washington, D. C.*

DEAR MR. HAYNES: There is attached hereto the original of a letter received from Mrs. J. Ray McCorkle, in which she calls to our attention the fact that Mr. McCorkle had to his credit some 60 or 70 days' annual leave which he was unable to take when he was ordered to military duty, and she is asking for consideration of a claim to be paid the annual leave. The history of the case is as follows:

1. Mr. McCorkle was furloughed effective July 1, 1941, for military service and training. At that time there was no provision for allowance of dual compensation, and consequently no leave was allowed concurrently with his military duty.

2. On October 27, 1941, we wrote Mr. McCorkle and informed him of his rights under Public Law 202, Seventy-seventh Congress, approved August 1, 1941. This letter was addressed to "Infantry Reserve, Camp Bowie, Tex." On December 13, we followed up this matter, and on January 30 the file was closed, since no reply had been received, nor had either of the two basic communications been returned to this office.

On February 9, a memorandum was received in this office from the assistant area conservationist of the western Colorado area, informing us that Mr. McCorkle had been killed in action, January 30, 1942.

It appears possible that Captain McCorkle never did receive our communications informing him of his rights, since the last address which we had was Camp Bowie, Tex.

I am attaching the original of Mrs. McCorkle's letter and copies of our letters of October 27 and December 13, 1941, with the request that you discuss the matter with Miss Mohagen, so that we may inform Mrs. McCorkle of the status of her claim.

Very truly yours,

Acting Chief, Regional Personnel Management Division.

ALBUQUERQUE, N. MEX., April 8, 1942.

Subject: Claims, death.

Mrs. J. RAY MCCORKLE,
State College, N. Mex.

DEAR MRS. MCCORKLE: Reference is made to your letter of February 20 to our Mr. Parke Haynes, concerning the death of your husband who was killed in action in the Philippines on January 30, 1942, and possible payment for annual leave he had accumulated while in our service.

You, of course, are acquainted with the fact we had our administrative assistant, Mr. Lovell Brown, at our Las Cruces, N. Mex., office, assist you in the preparation of a claim voucher—our Form 1055—covering all unpaid annual leave Mr. McCorkle had accumulated. These forms were completed here and forwarded to Washington for consideration of direct settlement by the General Accounting Office. In this connection, we have today been informed by the Solicitor's Office of the Department of Agriculture that the question of granting annual leave where an employee has not made a specific request has been submitted to the General Accounting Office for decision. The Solicitor's Office indicates the Comptroller General's decision is expected very soon but until a favorable decision is received, no action with regard to further processing claims can be made. If the Comptroller's decision is favorable, our Washington Office has promised to take quick action in seeing that your claim is properly supported and processed.

We will correspond with you further as soon as new information on the subject is received.

Very truly yours,

K. T. BLAIR,
Chief, Regional Budget and Finance Division.

NELLIE STARR McCORKLE

UNITED STATES DEPARTMENT OF AGRICULTURE,
SOIL CONSERVATION SERVICE,
Washington, D. C., May 15, 1942.

Mrs. NELLIE STARR McCORKLE,
Mesilla Park, N. Mex.

DEAR Mrs. McCORKLE: Reference is made to Standard Form No. 1055, presenting a claim in the amount of \$623.70, due the estate of J. Ray McCorkle, deceased.

We wish to advise that the above-mentioned voucher was forwarded on May 8, 1942, to the Claims Division, General Accounting Office, Washington, D. C., which is the Office of the Comptroller General of the United States. Any settlement effected will be made by that office.

Very truly yours,

R. L. GEIGER, Jr.,
Head Audit Section.

UNITED STATES DEPARTMENT OF AGRICULTURE,
SOIL CONSERVATION SERVICE,
Albuquerque, N. Mex., May 19, 1942.

Subject: Claim, death.

Mrs. J. RAY McCORKLE,
State College, N. Mex.

DEAR Mrs. McCORKLE: With reference to your claim in the amount of \$623.70, covering annual leave due Mr. J. Ray McCorkle at the time of his death, we are pleased to advise that claim has been administratively approved by our Washington office and presented to the General Accounting Office, Claims Division, under date of May 8, 1942.

It is our sincere hope that you will receive word in the form of a certificate of settlement from the General Accounting Office within the course of the next few weeks.

Very truly yours,

P. F. VON THADEN,
Head, Regional Audit Section.

SETTLEMENT CERTIFICATE
GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION

WASHINGTON, D. C., July 21, 1942.

Claim No. 1042318 (1).

NELLIE STARR McCORKLE,
Mesilla Park, N. Mex.

MADAM: Your claim in the amount of \$623.70 representing annual leave accumulated and accrued by your husband, John Ray McCorkle, deceased, while he was employed as an assistant agricultural engineer in the Department of Agriculture, Soil Conservation Service, prior to his entrance upon active duty as a captain in the United States Army on July 1, 1941, has been carefully examined and it is found that no part thereof may be allowed for the reasons hereinafter stated.

The decisions of this office have consistently held that the leave of absence for which payment is authorized by the act of August 1, 1941 (55 Stat. 616), must be applied for, administratively granted, and computed the same as in other case of annual leave, except, of course, that it need not be applied for or granted in advance.

The right of an employee to receive compensation covering his accumulated or accrued leave or to have such leave remain to his credit until his return from military or naval service, as provided in the act referred to, is a personal right to the employee concerned, and the right of election, if not exercised by the employee during his lifetime, lapses upon his death.

Inasmuch as it does not appear that Captain McCorkle made any election relative to his accumulated and accrued leave during his lifetime, pursuant to the act involved, there is no authority of law whereby payment may now be made to his estate for the amount of the leave in question.

I therefore certify that no balance is found due you from the United States.

Respectfully,

LINDSAY C. WARREN,
Comptroller General of the United States.
By E. B. HILLEY.

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